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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Policies and Rules Implementing)
the Telephone Disclosure and Dispute)
Resolution Act)

CC Docket No. 93-22

To: The Commission

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COMMENTS OF 900 CAPITAL SERVICES, INC.

900 Capital Services, Inc. ("Capital") hereby submits its comments in response to the Commission's Order on Reconsideration and Further Notice of Proposed Rulemaking regarding the policies and rules implementing the Telephone Disclosure and Dispute Resolution Act ("TDDRA").¹ In general, the Notice proposes to amend the Commission's regulations to give telephone subscribers greater protection from fraudulent and deceptive practices associated with the use of 800 and 900 numbers to provide information services. The Commission proposes stringent amendments to its current rules, including the requirement that all presubscription agreements for information services be in writing.

Capital's interest in this proceeding stems from its position as a source of financing to information providers operating via pay-per-call. Generally, Capital's arrangements with information providers ("IPs") involve "factoring" the pay-per-call

¹ Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, FCC 94-200 (Released August 31, 1994) ("Notice").

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receivables (i.e., providing loans to IPs who utilize their receivables as collateral). As such, Capital's interest is in ensuring that consumers generally are satisfied with their pay-per-call purchases because to the extent they are unhappy and refuse to pay the charges, Capital's outstanding loans are put at risk.

Capital agrees with the Commission that telephone subscribers should be given greater protection with respect to information services offered through presubscription agreements. However, the Commission's proposed rules would impose unnecessary and unwarranted burdens and costs on common carriers and IPs. Consumers also would be subject to unwarranted delays in obtaining information services under the Commission's proposed rules.

A. The Benefits of the Commission's Proposed Rules Do Not Outweigh the Burdens on Common Carriers, Information Service Providers and Consumers.

The Notice seeks comment on the Commission's proposed amendments to its rules regarding presubscription arrangements for information services. The primary amendment proposed by the Commission is to revise its definition of a "presubscription or comparable arrangement." To be considered a "presubscription or comparable arrangement" under the Commission's proposed rules, the agreements must be established with a legally competent individual and must be executed in writing, unless the charges are authorized to a credit or charge card. Capital agrees that only legally competent individuals should be allowed to enter into presubscription arrangements. However, Capital believes that requiring the agreement to be in writing is extremely

burdensome and that there is an effective, less onerous alternative. In short, the benefits of the Commission's proposed amendments do not outweigh the burdens placed on IPs, common carriers and consumers. Nor does Capital believe that the proposal will achieve its stated objectives.

As the Commission recognized in the Notice, the TDDRA seeks to ensure that the regulations do not stifle mutually beneficial business arrangements between IPs and their customers.² Requiring presubscription agreements to be in writing, however, would cause this exact result, for several reasons.

First, written presubscription agreements will be tremendously burdensome for IPs because they will be forced to pay for the mass mailing of the agreements to potential customers, many of which will never be returned. Also, consumers attempting to obtain information services will be frustrated by the lengthy process. Unless callers want to use their credit cards, they will have to contact the IP, wait to receive the written agreement, and return the completed agreement before they can obtain any of the services. It could easily take weeks to complete this process. Finally, this type of written agreement requirement also will stifle the development of new, legitimate information services. Consumers value information services provided over the telephone for the immediacy of the service. If the proposed rules are adopted, consumers will no longer be able to sample new services that interest them without going through the Commission's arduous written agreement process.

² Notice at ¶ 23.

From a business standpoint, requiring that all presubscription agreements be in writing simply is not feasible. The expense and delay in mailing presubscription arrangements cannot possibly be offset by the small number of consumers who would take the time to actually return the written agreement. As a result, the Commission's proposal is tantamount to a ban on the use of presubscription for pay-per-call services. In considering this fact, it is important to note that many IPs have complied with the Commission's rules, invested millions of dollars, and developed new technology to provide legitimate pay-per-call services using 800 access. If the Commission's proposed amendments are implemented, this investment will become worthless. The Commission will have put many legitimate and innovative businesses out of business.

B. Capital's Alternative Plan Is Equally Effective in Preventing Abuse and Is Less Burdensome on Common Carriers and IPs.

In its Notice, the Commission asked commenters to describe alternate means of protecting consumers from deceptive practices involving information services offered under presubscription agreements.³ Capital submits that there is a less burdensome alternative available to the Commission that will afford telephone subscribers effective protection from abuse. Capital proposes the following alternative plan for obtaining presubscription agreements for information services.

³ Notice at ¶ 31.

Any caller that does not complete a written presubscription agreement with the IP would be required to go through a four-step process before being connected to the IP. In order to complete a presubscription agreement and obtain a Personal Identification Number ("PIN") for future calls, the following steps would be taken:

- 1) the originating telephone number of the call would be validated against a Line Information Database ("LIDB") maintained by the LEC to screen out calls from public and semi-public telephones and other locations where billing would not be warranted;
- 2) the originating telephone number would be validated against a 900 number blocking database to screen out calls from locations where blocking of access to 900 number services has been requested;
- 3) the caller would be required to listen to a scripted disclosure statement and respond to a set of questions to ascertain the identity and age of the caller and ensure that the caller is the person responsible for payment of charges billed to that telephone. In addition to the current requirements for a valid presubscription agreement, Capital suggests the following information be obtained or conveyed:
 - Caller's name;
 - Caller's address;
 - Caller's date of birth;
 - The telephone subscriber's name;

- An explanation of the information service or specific acknowledgment by the caller that he understands the service;
 - An express statement of the payment requirements;
 - A request that the caller verbally restate the payment terms and his acceptance of them; and
- 4) charges for information services would have a separate billing identification code so that charges for information services could be recognized easily by consumers, with no confusion as to the fact that failure to pay will not lead to loss of local or long distance telephone service.

By asking these detailed questions and making these disclosures, IPs will receive confirmation that the caller is the telephone subscriber and that the caller understands and is legally competent to enter into the agreement. Also, the caller will be aware of all material terms of the information service, including the payment terms, and can identify the charges on LEC bills. In this way, callers will receive all of the basic information they need to make informed choices and IPs will have evidence that the caller actually agreed to accept the service on the terms offered. Thus, Capital's proposed four-step plan would be as effective as the Commission's proposed rules for protecting telephone subscribers from abusive practices, and would allow legitimate business activity to continue with far less regulatory intrusion.⁴ Moreover, under

⁴ If the Commission feels it necessary, any presubscription arrangements entered into prior to the adoption of this plan could be reestablished by IPs according to this process to ensure that no further fraudulent or deceptive practices occur.

Capital's plan, consumers would not be forced to wait weeks to obtain access to their desired information services.

As noted above, Capital is acutely aware of and concerned about consumer satisfaction. The principal risk encountered in Capital's business is that consumer unhappiness will jeopardize the value of the receivables which it has accepted as collateral, leaving Capital financially exposed. To reduce this risk, Capital already has implemented some of the safeguards that it recommends that the Commission adopt in this proceeding. For example, when the company discovered that its clients were making an excessive number of refunds to dissatisfied customers -- known as "chargebacks" -- it began requiring its clients to validate the calls against the LEC LIDB. Capital estimates that this measure alone has reduced the number of chargebacks by sixty percent. The company believes that the procedures proposed herein strike the best balance between protecting consumers and ensuring that legitimate businesses are not eliminated.

**C. IPs Should Have Access to LEC's 900
Number Blocking Database for Screening Purposes**

As the Commission recognizes in the Notice, the blocking protection offered for 900 numbers is not practical for 800 numbers because it would compel subscribers to sacrifice access to toll-free 800 numbers to protect themselves from 800 number information service charges.⁵ However, 800 blocking is not necessary if IPs are

⁵ Notice at ¶ 25.

required to validate calls against a 900 blocking database. Under Capital's proposal, IPs would not be allowed to complete 800 number calls if the subscriber had requested 900 number blocking. Thus, subscribers would be able to block both 900 number calls and 800 number calls to information services.

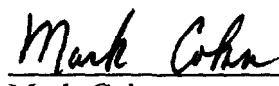
At present, validation against a 900 blocking database is not possible because LECs will not provide this information to IPs. Regardless of whether the Commission adopts Capital's plan, the Commission should require that LECs make this type of information available to IPs, or at least the ability to access it on a blind basis for the purpose of validation. This type of validation would not be intrusive for the LECs because the IPs would not need full access to customer proprietary information, just the ability to determine whether particular telephone numbers are blocked. Neither the LECs nor consumers should raise any additional privacy concerns regarding this proposal because this type of validation is currently used successfully for billed number and calling card screening. Furthermore, it is in the consumer's interest for the Commission to require LECs to allow IPs to check whether particular telephone numbers are blocked for 900 calls. Consumers listed on this database have requested that their telephone numbers be blocked against calls to information services, and this additional validation would provide consumers with the most complete protection against those types of undesired calls. Thus, it will serve the public interest for the Commission to direct the LECs to include within their LIDB files an indication of whether telephone numbers are subject to a 900 number block. This requirement is

within the agency's jurisdiction under the TDDRA, as well as the Communications Act, and should be imposed on the LECs.

CONCLUSION

Capital supports the Commission's recognition that telephone subscribers should be given greater protection with respect to information services offered through presubscription agreements. However, the Commission's proposed rules impose unnecessary and unwarranted burdens and costs on common carriers, IPs and consumers. In its position as a lender and factorer, Capital has reviewed the detailed financial statements and business plans of many IPs. A blanket requirement that all use of 800 numbers for information services be pursuant to written presubscription agreements would essentially render infeasible virtually all such uses. The alternative plan proposed by Capital alleviates these burdens and is consistent with the Commission's stated objective of ensuring that consumers are effectively protected from abusive practices.

Respectfully submitted,



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